

JUDGE'S COPY

FILED
HARRISBURG, PA

MAY 03 2001

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA

JAMES R GREEN

PETITIONER

v

JONATHAN MINER

RESPONDENT

MARY E. D'ANDREA, CLERK
Per *[Signature]*
Deputy Clerk

NOV 1 1999 00 1631

JUDGE KANE

PETITIONER'S ANSWER

PETITIONER'S ANSWER TO THE GOVERNMENT'S RESPONSE
TO PETITIONER'S REQUEST FOR WRIT OF HABEAS CORPUS

Comes now James R Green pro,se petitioner in the above style
heraby answer's the Government's response to the petitioner's
request for a writ of habeas corpus.

The petitioner maintains that he is innocent of the charges
inwhich he was convicted and that his trial was a miscarriage
of justice thus requiring a new trial.

The government is requesting that the court ignore the
multitude of of errors and lack of counsel at the petitione's
trial. To date the petitioner's issues have not been address-
ed. The Six Amendment quarantee's that all Americans will
have the right of a fair trial and adquate counsel. The
petitioner's trial makes the adversarial process itself pre-
sumptively unreliable, and the trial a MISCARRAGE OF JUSTICE.

The government argues that Section 2255 motions are now the exclusive means by which a federal prisoner can challenge a conviction or sentence that is in violation of the constitution or federal laws or that is otherwise subject to collateral attack. Section 2255 pertains to a motion by a federal prisoner to vacate set aside or correct his sentence and does not grant Jurisdiction to district court over all post conviction claims, but is limited to those claims attacking the execution of the sentence; 28 U.S.C. 2241 is cognizable solely under this section. *Wright v U.S. Bd of Parole* 557 f.2d 74 . Section 2241 habeas corpus lies to test proceedings so fundamentally law less that imprisonment pursuant to them is not merely erroneous but is void and therefore Resjudicata is inapplicable in habeas proceedings. *Fay v Noia* 83 S.Ct 822, 372 U.S. 391 9Led 2d 637(1963).

The government states that the third circuit addressed the extremely limited availability of a 2241 motion to challenge a federal conviction in *Dorsainvil*, 119 f.3d 245(3rd cir. 1997). There the defendant wished to challenge his conviction under 18 U.S.C. 924c after the supreme court in *Bailey v United States* 516 U.S. 137(1995), limited the circumstances under which a person could be convicted of that offence. The third circuit held that the petitioner could not raise this issue in a successive 2255 petition given the statutory limitations on successive 2255 petitions. *Dorsainvil* was in a position where he may well have been convicted for conduct that was not cri-

iminal with him having no 2255 remedy.

As the ruling in *Hailey v United States* made the petitioner's offense not criminal, *Apprendi v New Jersey* 120 S.Ct 2348

(2000), and *Jones v United States* 526 U.S. 277 119ct. 1212

(1999), make the petitioner innocent of the offense of the offense that he was sentenced for and at the very least worthy of review. Because the new rulings didnot involve proceedings as to collateral attack and neither has the Supreme Court expressly stated that the holdings in *Apprendi* and *Jones* are retroactive as to collateral review, leaves the petitioner in a position where he is innocent of his conviction and sentence and having no 2255 remedy to correct it. Without Supreme Court guidance new rules of constitutional law for a second and successive 2255 motion cannot be adjudicated as per the (AEDPA).

The court acknowledges that in special cases where a second 2255 motion is unavailable to the petitioner who strongly contends that his sentence is illegal as per the holdings in *Apprendi* and *Jones*, a 2241 motion is essential for a federal prisoner in this position to challenge the illegality of his custody, where a 2255 motion would be ineffective and inapplicable, because the new ruling were previously unavailable.

The petitioners issues have not been adjudicated and
certainly deserves a evidentiary hearing.
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For the reasons stated above, the petitioner prays on the
court to reject the governments response and grant the pet
itioner a fair adjudication on his issues.

RESPECTFULLY SUBMITTED

4/29/01

James R Green

JAMES R GREEN

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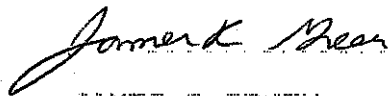
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CERTIFICATE OF SERVICE

I JAMES R GREEN HEREBY CERTIFIES THAT A TRUE COPY OF THE
PETITIONER'S ANSWER TO THE GOVERNMENT'S RESPONSE HAS BEEN
FORWARD TO THE FOLLOWING.

MATTHEW E HAGGERTY
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RESPECTFULLY SUBMITTED



JAMES R GREEN

4/29/01